



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND
ENVIRONMENT

Variation to the Territory Plan No.224

Block 1 Section 54 Lyneham

(Australian Capital Motor Inn)

Proposed Residential Use

MAY 2004

REPORT 29

Committee membership

Chair	Ms Roslyn Dundas MLA
Deputy Chair	Mr John Hargreaves MLA
Members	Mrs Vicki Dunne MLA
	Mrs Helen Cross MLA

Committee Secretary: Miss Linda Atkinson and Ms Kerry McGlinn

Administration: Mrs Judy Moutia

Resolution of appointment

- (1) The following general purpose standing committees be established and each committee to inquiry into and report on matters to it by the Assembly or matters that are considered by the committee to be of concern to the community:
 - (f) A Standing Committee on Planning and Environment to examine matters relating to planning and land management, conservation and heritage, transport services and planning, environment and ecological sustainability.
- (2) If the Assembly is not sitting when the Standing Committee on Planning and Environment has completed consideration of a report on draft plan variations referred pursuant to section 25 of the *Land (Planning and Environment) Act 1991* or draft plans of management referred pursuant to section 204 of the *Land (Planning Environment) Act 1991*, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

Terms of reference

Section 25 of the *Land (Planning and Environment) Act* 1991 states:

25 Consideration by a Legislative Assembly Committee

The Executive shall, within 28 days of receiving a draft variation under section 24, refer –

(a) the draft plan variation; and

(b) the documents referred to in subsection 24(1) that relate to the draft plan variation;

to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft plan to the Legislative Assembly.

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Summary of recommendations

Recommendation 1

The Committee recommends that the Government facilitate more open competition through the application of more flexibility in the land use policies, to provide the best opportunity for business to develop in the ACT.

Recommendation 2

The Committee recommends that the Government take more care in being seen to generate changes in land use policy that are the result of specific requests of private developers.

Recommendation 3

The Committee recommends that all future Draft Variations include a statement to show where the change in land use policy is either consistent or inconsistent with all of the current strategic planning documents released by the ACT Government which provide strategic frameworks for Canberra's future.

Recommendation 4

The Committee endorses Draft Variation 224 as a variation to the Territory Plan.

1. Introduction

The *Land (Planning and Environment) Act 1991*

1.1 The *Land (Planning and Environment) Act 1991* (the Act) provides for a Territory Plan (the Plan) to “set out the planning principles and policies”¹ for the ACT. The objective of the plan is to ensure that the planning and development of the Australian Capital Territory provides an “ecologically sustainable, healthy, attractive, safe and efficient environment”² for the people of the Territory.

1.2 The Plan includes both a Written Statement, setting out general planning principles and more specific land use policies, and a map. The Act places conditions on development or land use within designated areas to meet the principles prescribed for that land on the Plan.

1.3 Land use requirements change over time and the *Act* sets in place a regime by which the stipulated land use can be altered or varied. Proposals to vary the Plan are prepared by the Territory planning authorities and are known as draft variations. Draft variations are required to be the subject of community consultation. There can be a number of versions of a draft variation depending on the consultation program.

1.4 After public consultation a draft variation, incorporating any amendments made as a result of public comment, and associated papers, is referred by the ACT government to the appropriate committee of the Legislative Assembly for the Australian Capital Territory. The Standing Committee on Planning and Environment is the committee established by the Fifth Assembly to do this.

1.5 The *Act* does not place any requirements on the committee’s consideration of the draft variation but does require the Government to consider any recommendation that the committee may make in relation to the “draft plan variation, background papers and reports submitted”³. The committee’s reports inform not only the Government but also all Members of the Assembly on the committee’s deliberations and provide a context for the Assembly to consider the Government’s approved variation.

¹ *Land (Planning and Environment) Act 1991*(the Land Act), section 7 (2).

² *ibid.*, section 7 (1).

³ *Ibid.*, section 26(2).

2. Background to Draft Variation No. 224

2.1 This report addresses the background and intent of Draft Variation No. 224 (DV 224).

2.2 On 30 March 2004, the Minister for Planning forwarded to the Standing Committee on Planning and Environment for consideration and report a copy of DV 224 to the Territory Plan for Block 1 Section 54 Lyneham (Australian Capital Motor Inn) Proposed residential use. Appendix 1 shows current land use policies and the site showing development in place around it. Appendix 2 shows the proposed Residential Land Use Policy.

2.3 DV 224 is based on a proposal being considered by ACTPLA from the lessee of Block 1 Section 54 Lyneham (the Australian Capital Inn) to demolish the existing 54-room motor inn and erect a two-storey building containing 57 apartments. To permit such a multi-storey residential development, a land use policy change is required from the current classification of Entertainment Accommodation and Leisure that allowed for the existing Australian Capital Motor Inn to be built some forty years ago.

2.4 The draft variation documents referred to the Committee indicate that 'the relocation of the Barton Highway in the late 1970s had a negative impact on the viability of the motel and the standard of accommodation has progressively declined. The site is now only marginally viable for a motel, and the proximity of adjacent residential uses would preclude most of the other activities that might be considered under the Entertainment Accommodation and leisure Land Use Policy, including a club or hotel. The building and site infrastructure is now in need of substantial refurbishment'⁴

⁴ Explanatory Statement of Draft Variation 224 document, para 1.1, page 2.

3. Proposed Residential Use of Block 1 Section 54 Lyneham

3.1 The Committee sought additional information from the Minister for Planning but resolved that further submissions from the public or public hearings for this Inquiry were not warranted. The Committee was concerned about the apparent lack of planning associated with this Draft Variation. The case presented in the Draft Variation clearly states that the lessee of Block 1 Section 54 Lyneham must have the land use varied if the lessee's plans to build the residential apartments can proceed. However the supporting documents for the Draft Variation failed to provide:

- Analysis or justification as to why an apparent automatic switch to a B12 Area Specific Policy Overlay based on the request of a lessee is strongly favoured by the Minister for Planning;
- Analysis regarding land use policies and what alternatives may have been considered as being the most beneficial outcome for the area; and
- Analysis of traffic impact or traffic arrangements if such a residential development was to proceed.

3.2 Following a request from the Committee, the Minister for Planning provided a copy a Planning Study report prepared on behalf of the proponent and lessee of Block 1 Section 54 Lyneham, Prestige Building Services Pty Ltd, by McCann Property & Planning Pty Ltd, town planning consultants on 15 October 2003. This report was prepared 'to provide background information for a proposed Draft Variation to the Territory Plan'⁵, and states that 'the research and analysis has been completed to the satisfaction of the ACT Planning and Land Authority'⁶.

3.3 This report confirmed that since mid June 2002, the lessee had been negotiating with ACTPLA to change the land use policy for the site so that it could be used for 'residential development comprising 57 units of 1, 2 and 3 bedrooms with appropriate car parking and landscaping'⁷. The Planning and Land Council expressed concerns that there has already been a significant loss of budget accommodation stock to redevelopment in inner Canberra, but accepted key factors as sound justification for the residential development to proceed:

- a. the apparent marginal viability of the motel because the proximity of adjacent residential uses would preclude most other activities that

⁵ Planning Study Block 1 Section 54 Lyneham Australian Capital Motor Inn Site, 15 October 2003, page 1.

⁶ Ibid., page 1.

⁷ Ibid.,.

might be considered under the Entertainment Accommodation and leisure Land Use Policy, including a club or a hotel;

- b. the decline in the standard of the motel's accommodation, it needing substantial refurbishment;
- c. the circumstances for the land use policy have changed (that is, the location of the motel is no longer on the road into Canberra) and apart from the Old Canberra Inn on the adjacent site, the motor inn is surrounded by residential and community land uses;
- d. the current Entertainment, Accommodation and Leisure land use does not protect the retention of budget accommodation on the site.⁸

3.4 The Planning Study⁹ report included evidence of:

- a successful, broadly based consultation process with the local community
- compatibility of the proposed changed land use with the National Capital Plan 'Urban' zone of the site
- comprehensive impact studies including Potential Impact on the Physical Environment; Potential Impact on the Human Environment; Economic Impacts; Planning Considerations; Potential Impact on the Non-Human Biological Environment; Potential Beneficial Impacts.

3.5 The Committee notes that the Planning and Land Council supported the commencement of the Draft Variation process, but urged the 'Government to consider separately the recent and impending loss of budget accommodation stock, and to consider ways of restoring opportunities for this form of accommodation through positive rather than regulatory planning initiatives'¹⁰.

3.6 The Lyneham Neighbourhood Plan published in February 2003 recommended 'Territory Plan Coordination to initiate a draft variation for Block 1 Section 54 Lyneham. PALM to ensure that the density of development under a purpose variation accords with densities found generally in multi-unit dwellings in the Lyneham area'¹¹.

3.7 The Committee is concerned about the traffic congestion in the area, and that the increase in the number of units from 54 to 57 and the change in

⁸ Planning and Land Council Minutes 29 October 2003, page 4.

⁹ Planning Study Block 1 Section 54 Lyneham Australian Capital Territory McCann Property and Planning Pty Ltd-brief summary compiled by Committee Secretary, Standing Committee on Planning and Environment from the report.

¹⁰ Planning and Land Council Minutes 29 October 2003, page 4.

¹¹ Planning Study Block 1 Section 54 Lyneham Australian Capital Territory McCann Property and Planning Pty Ltd, page 4.

land use from motor inn to residential could result in higher vehicle movements from the site. In a response to concerns expressed by the North Canberra Community Council about 'insufficient area for internal roads, lack of visitor parking, garbage disposal problems, traffic and access issues, noise generation and loss of trees'¹², ACTPLA provided the response 'the draft variation is not the mechanism for resolving detailed design issues. These are resolved during the High Quality Sustainable Design and development application stages when the development will be assessed within the context of the Territory Plan's relevant code for multi unit development and relevant guidelines.'¹³

3.8 The Committee notes the support for the redevelopment from the Planning and Land Council, the local community, and the Planning Study report. However, the Committee firmly believes that changing land use policies to accede to the demands of local developers does not represent sound holistic planning practice. The Committee concludes that it also does not indicate how such adhoc changes were justified merely on the basis of local issues, or how these changes will be beneficial to the ACT overall planning long-term outcomes.

3.9 The Committee has been in recent situations where inquiries referred to it have called on the Committee to exercise extreme caution so that it is not seen to be favouring certain commercial enterprises who want their own way with development directions, especially where this might require a variation to the Territory Plan. ACTPLA should be making planning and land development decisions in a strategic framework rather than responding to adhoc requests for changes in land use policy to suit a specific commercial outcome.

3.10 A most recent example is that of the Inquiry into Building a Supermarket at the Belconnen Markets where the Committee expressed the following concerns:

*'This Inquiry presented a risk of setting a precedent that the Committee may be regarded as looking into whether a specific commercial interest may be permitted to commence trading in a specific location. The Committee was particularly concerned that the Government should not be seen to be preparing Draft Variations to specifically support a 'commercial' company ... unless there is a proven community benefit.'*¹⁴

¹² Report on Consultation with the Public and Government Agencies 23 March 2003, ACTPLA for Draft Variation 224, Introduction, para 2.2.1 Desirability of proposal for 57 apartments on the subject site.

¹³ Ibid.,

¹⁴ Report No 27 of March 2004 'Inquiry into the Building of a Supermarket at the Belconnen Markets', page 17.

3.11 On that occasion the Committee's included in its report as Recommendation 1:

*'The Committee recommends that the Government facilitate more open competition through the application of more flexibility in the land use policies, to provide the best opportunity for business to develop in the ACT.'*¹⁵

3.12 The Committee acknowledges that almost two years has passed since the developer approached ACTPLA for a change in the land use policy, and that there has been reasonably comprehensive impact studies and local community consultation, but there is no statement as to how this change in land use will benefit the overall planning outcomes for the ACT. The Planning and Land Council comments are the closest that come to strategic consideration of the planning and land management issues when it urges the Government to 'consider separately the recent and impending loss of budget accommodation stock, and to consider ways of restoring opportunities for this form of accommodation through positive rather than regulatory planning initiatives'¹⁶.

3.13 The Committee has concerns about how land use policy in the ACT is appearing to be driven by adhoc requests from developers or land owners to 'negotiate some deal for themselves'¹⁷ or simply without transparent justification for the proposed land use changes. Draft variations referred to the Committee for inquiry consistently are characterised by an absence of strategic analysis or context within the package of planning documents released recently by the Minister for Planning.

3.14 Other examples include Draft Variation Number 174 where PALM acknowledged that the Draft Variation had proceeded without any planning work being done to 'assess current or future demand for this type of land'¹⁸. In Draft Variation Number 200¹⁹ the Committee observed high levels of inconsistency in the way in which Draft Variations to the Territory Plan are justified because there is an absence of strategic analysis of impact to long term planning directions of land use policy changes with regard to future urban form of Canberra, including density and urban consolidation. In Draft Variation Number 175, ACTPLA's predecessor, PALM, pushed for changes in land use policy so that interstate major bulky goods retailers could enter the

¹⁵ Report No 27 of March 2004 'Inquiry into the Building of a Supermarket at the Belconnen Markets', page viii.

¹⁶ Planning and Land Council Minutes 29 October 2003, page 4.

¹⁷ Draft Variation No. 174 to the Territory Plan Hungarian-Australian Club site and Community Facility Land, Report No. 4 May 2002, page 7.

¹⁸ Ibid., page 4.

¹⁹ Draft Variation No. 200 to the Territory Plan Garden City Variation Residential Land Use Policies, Modifications to Residential Codes and Master Plan Procedures Land (Planning and Environment (Act 1991, April 2003, page 30

Canberra market and for other less transparent reasons. The Committee on that occasion 'formed a strong view that this Draft Variation (Draft Variation Number 175) is not forward looking; lacks strategic, spatial and economic analysis with surrounding and adjacent residential areas; ignores practical and sensible business issues for small business and contradicts new policies for Industrial Land Use'²⁰. The Committee finds itself repeating its message in its recommendations to the ACT Government and the Legislative Assembly.

3.15 The Committee is prepared to endorse Draft Variation 224 proceeding, but would like the Government to place more effort into strategic considerations of changes in land use policy and to demonstrate the consistency of any future land use policy changes with the Canberra Plan, the Spatial Plan, the Sustainable Transport Plan, the Social Plan and any other recently released strategic planning documents prepared by the Government that relate to planning and land management and transport issues.

Recommendation 1

The Committee recommends that the Government facilitate more open competition through the application of more flexibility in the land use policies, to provide the best opportunity for business to develop in the ACT.

Recommendation 2

The Committee recommends that the Government take more care in being seen to generate changes in land use policy that are the result of specific requests of private developers.

Recommendation 3

The Committee recommends that all future Draft Variations include a statement to show where the change in land use policy is either consistent or inconsistent with all of the current strategic planning documents released by the ACT Government which provide strategic frameworks for Canberra's future.

²⁰ Draft Variation No.175 to the Territory Plan Industrial B3 Land Use Policies Industrial Area Policies and Definitions: Fyshwick, Symonston, Mitchell, Hume, page 19.

Recommendation 4

The Committee endorses Draft Variation 224 as a variation to the Territory Plan.

Roslyn Dundas MLA

Chair

12 May 2004

Appendix 1 – Current Land Use Policy Block 1 Section 54 Lyneham

1.2 Current Territory Plan Policies

The variation applies to Block 1 Section 54 Lyneham.

The existing Land Use Policy for the area subject to this variation is shown in **Figure 1.1**.

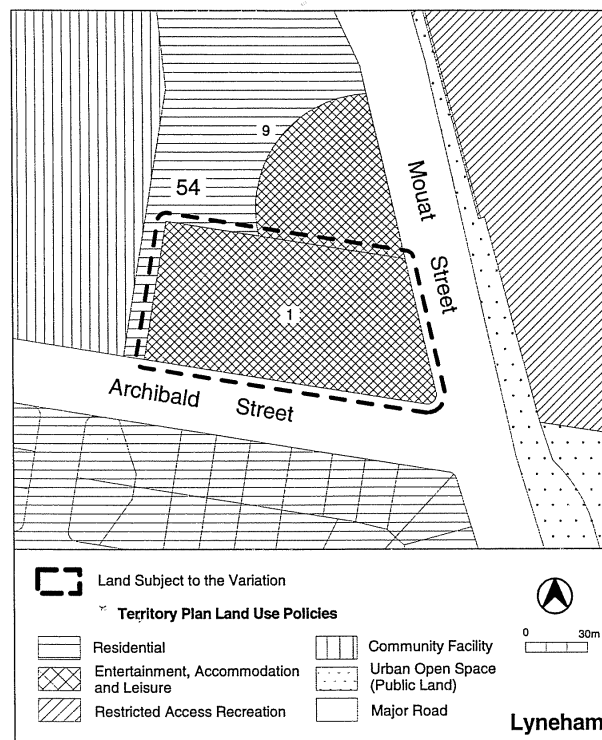
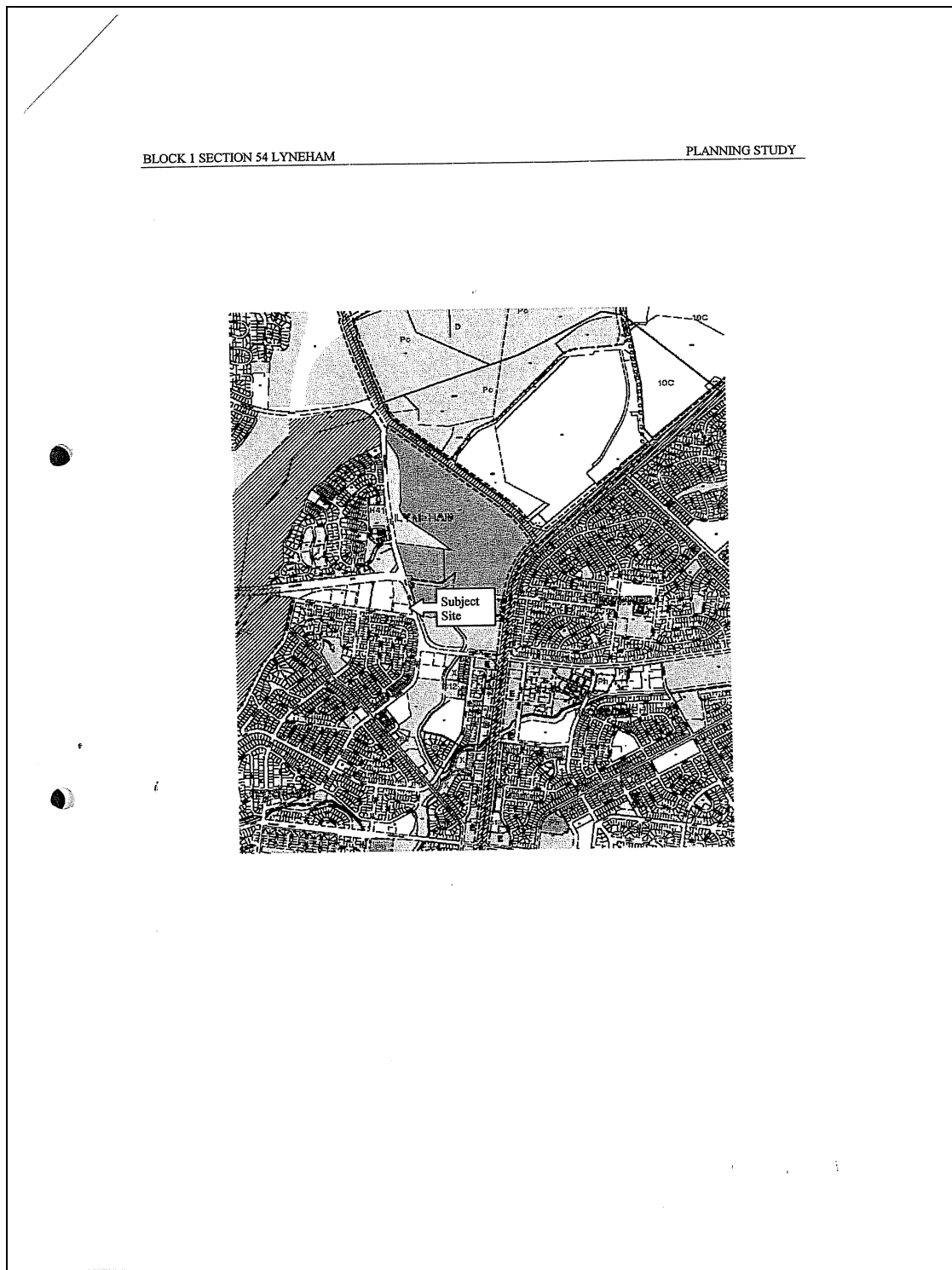


Figure 1.1 – Territory Plan Current Land Use Policies

Source: Variation to the territory Plan No. 224 Block 1 Section 54 Lyneham (Australian Capital Motor Inn) Proposed Residential Use January 2004, page 4.

Appendix 1 – Current Land Use Policy Block 1 Section 54 Lyneham (continued)



Source: Planning Study Block 1 Section 54 Lyneham Australian Capital Motor Inn Site, McCann Property and Planning Pty Ltd, 15 October 2003, Figure 2.

Appendix 2 – Proposed Land Use Policy Residential land Use Policy Block 1 Section 54 Lyneham

2. VARIATION

The Territory Plan map is varied for the area shown as subject to variation as follows:

- removing the current Entertainment Accommodation and Leisure Land Use Policy
- replacing with Residential Land Use Policy including a B12 Area Specific Policy overlay

as indicated below.

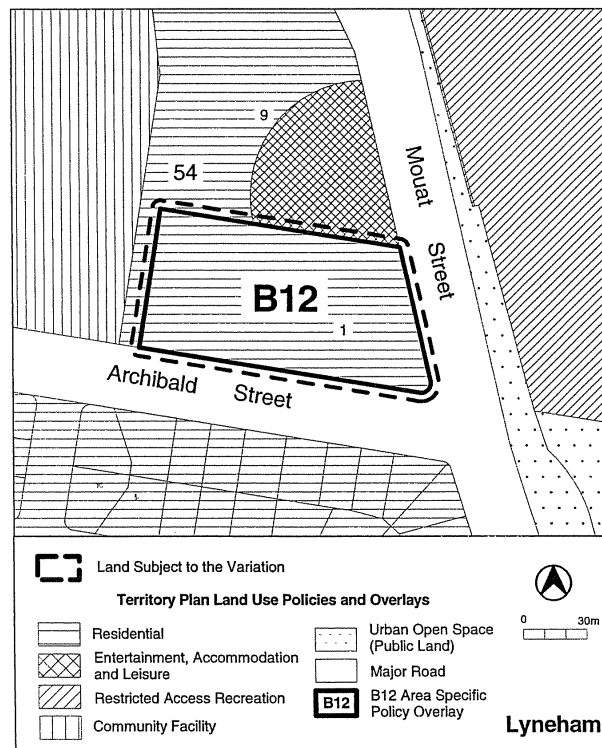


Figure 2.1 – Territory Plan Proposed Land Use Policy

There are no changes to the Territory Plan written statement.

Source: Variation to the Territory Plan No. 224 Block 1 Section 54 Lyneham (Australian Capital Motor Inn) Proposed Residential Use, page 6.

